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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/044,683	01/08/2002	William John Martin		9709

7590 06/29/2004

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EXAMINER

FOLEY, SHANON A

ART UNIT	PAPER NUMBER
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1648

DATE MAILED: 06/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/044,683	Applicant(s) MARTIN, WILLIAM JOHN	
	Examiner Shanon Foley	Art Unit 1648	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-21 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claim 1, drawn to a method to test for the ability of a stealth virus to induce the production of auto-fluorescent material in cells, classified in class 435, subclass 7.2.
- II. Claim 2, drawn to a method to test for the ability of a stealth virus to induce the production of auto-fluorescent material in bacteria, classified in class 435, subclass 7.32.
- III. Claim 3, drawn to a method of testing the ability of light to cause damage to stealth virus infected cells that have accumulated auto-fluorescent material, classified in class 435, subclass 32.
- IV. Claims 4-10, drawn to a method of treating a stealth virus infection by exposing infected cells within a patient to a light source, classified in class 607, subclass 80.
- V. Claims 11 and 12, drawn to a method of treating a stealth virus infection by exposing stealth virus infected bacteria within a patient to a light source, classified in class 600, subclass 411.
- VI. Claims 13 and 14, drawn to a method of destroying stealth virus infected cells in a biological sample by administering light, classified in class 435, subclass 7.21.
- VII. Claim 15, drawn to a method of destroying stealth virus infected bacteria in an environmental sample, classified in class 588, subclass 210.

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VIII. Claims 16-18, drawn to a method to test the ability of a stealth virus to induce the production of material in cells that is activated by an energy source other than light, classified in class 436, subclass 183.

IX. Claims 19-21, drawn to a method of treating a stealth virus infected patient by exposing virus infected cells within a patient to an energy source other than light, classified in class 424, subclass 9.2.

The inventions are distinct, each from the other because of the following reasons:

Inventions I-IX are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). Group I is drawn to a method of testing the ability of a stealth virus to induce the production of auto-fluorescent material in cells derived from blood and/or tissue while the method of group II is drawn to a method of testing the ability of a stealth virus to induce the production of auto-fluorescent material in bacteria. The methods require different populations of cells and growth conditions to complete the object of the method. The methods of groups I and II differ from the method of group III because the object of the method of group III is drawn to characterizing whether light causes damage to stealth virus infected cells that have accumulated auto-fluorescent material. Groups IV, V and IX are in vivo treatment methods. However, the method of group IV is drawn to exposing any infected cell within a patient to a light source, whereas the method of group V is drawn to exposing only stealth virus infected bacteria to a light source. These methods are in contrast to the method of group IX, where virus infected cells within a patient are exposed to an energy source other than light. The methods of groups IV, V and IX are in contrast to the in

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vitro methods of groups VI, VII and VIII. The method of group VI requires destroying a stealth virus infection in a biological sample by administering light, while the method of group VII requires that the light treatment be applied to stealth virus infected bacteria within an environmental sample. These methods are in contrast to the method of group VIII, drawn to determining whether a stealth virus induces the production of material in cells that is activated by an energy source other than light.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification and divergent subject matter, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shanon Foley whose telephone number is (571) 272-0898. The examiner can normally be reached on M-F 9:30 AM - 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel can be reached on (571) 272-0902. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Shanon Foley
Patent Examiner, 1648